

**REMARKS**

Claims 1, 6, 8-14, and 18-30 are pending. Claims 2-3 and 15-17 have been withdrawn from consideration. The Applicants thank the Examiner for allowing claims 10-14 and 18-26. Reconsideration of the Examiner's rejections and objections concerning the remaining claims is respectfully requested.

**Withdrawal of Claims 4, 5, 11 and 12/Drawing Objections**

The Examiner withdrew claims 4, 5, 11, and 12 as being drawn to a non-elected species. However, in the Applicant's response to the Restriction Requirement, dated Feb. 27, 2008, the Applicants specifically stated that, "Claims 1, 4-9, 10-14, 18-26 and 27-30 are readable on the elected species." The Applicants' statement that at least claims 1, 10 and 27-30 are generic of species 19 should not be interpreted to mean that all other claims should be withdrawn from consideration. According to MPEP, section 806.04(d): "In an application presenting three species illustrated, for example, in Figures 1, 2, and 3, respectively, a generic claim should read on each of these views." Therefore, the Examiner's assertion is inconsistent with the definition of a generic claim.

The Examiner further asserted that the features recited in claims 4-5 and 11-12 are not shown in the figures corresponding to the elected species. The Applicants draw the Examiner's attention to the language of 37 CFR 1.83(a): "The drawing in a nonprovisional application must show every feature of the invention specified in the claims." As it is apparent from MPEP section 608.02, the terms "drawing" and "drawings" are used interchangeably to refer to one or more drawings furnished by the Applicant "where necessary for the understanding of the subject matter sought to be patented." Therefore, nowhere does the language of 37 CFR 1.83(a) or of the applicable sections of MPEP require that particular drawings (among others in a patent application) must show all elements of particular claims. In contracts, it is well established that claims must be read in view of the *entire* specification.

Thus, support for claimed features is not limited to drawings illustrating elected species, but rather can be found throughout the *entire* specification. Because support for claims 4, 5, 11 and 12 is found at least in Fig. 9, and previously noted by the Applicants, the drawing objection presented by the Examiner has been overcome. Further, the recited limitation "the clip openings

of the first respiratory component comprise four generally parallel slots, and wherein the intermediate portion of the mounting clip is received in each of these slots” is also shown in at least Fig. 2, which has not been listed by the Examiner as specifically showing one of the species 1-9.

Therefore, it is respectfully submitted that claims 4, 5, 11 and 12 should not be withdrawn, and that the drawings comply with 37 CFR 1.83(a).

### **Rejoinder of Claims 15-17**

Regarding claims 15-17, withdrawn claims 15-17 also depend on the allowed claim 10. Under MPEP, section 809: “Any claim(s) directed to the nonelected invention(s), previously withdrawn from consideration, which depends from or requires all the limitations of the allowable linking claim must be rejoined and will be fully examined for patentability.” See also 821.04(a): “... a requirement for restriction should be withdrawn when a generic claim, linking claim, or subcombination claim is allowable and any previously withdrawn claim depends from or otherwise requires all the limitations thereof.”

Because claims 15-17 incorporate all of the limitations of the allowed claim 10, these claims are likewise patentable. For at least the reasons above, rejoinder of claims 15-17 is respectfully requested.

### **§ 102 Rejections**

Claims 1, 6, 8, and 9 are rejected under 35 USC § 102(e) as being anticipated by U.S. Patent 6,907,882 to Ging et al. MPEP 2131 sets forth the standard for anticipation, “A claim is anticipated only if *each and every element* as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” (*Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).)

The Examiner contends that Ging discloses each of the limitations of independent claim 1; however, the Applicants respectfully disagree. For example, claim 1 recites, “wherein the intermediate portion of the mounting clip is received within both of the clip openings of the first respiratory component.” The Examiner designates components 38 of Ging as showing “clip openings of the first respiratory component”; however, FIG. 10a of Ging shows the “free ends 116”

as being inserted into clip openings 38, *not* the section between “free ends 116” that the Examiner designates as the “intermediate portion.”

Further, claim 1 recites, “the free ends of the mounting clip are received in the clip openings of the second respiratory component.” If FIG. 10a shows that the intermediate portion of the mounting clip is received within the first respiratory component (34), as the Examiner suggests, then the free ends (116) of the mounting clip are also received within the *first* respiratory component, not the *second* respiratory component. Because of at least the reasons above, claim 1 is patentable over Ging et al.

Claims 6, 8, and 9 each add additional features to claim 1 and are likewise patentable for at least the same, and additional reasons.

For example, regarding claim 6, the Examiner contends that FIGs. 5a and 5c of Ging show a belt as recited in claim 6 of the present application. However, FIGs. 5a and 5c of Ging illustrate different views of a frame 20 for a nasal mask assembly (Col. 8, lines 7-15, Col. 10, lines 34-43), which is not a belt.

Regarding claim 8, the Examiner contends that FIGs. 5a and 5c show biased detent tabs as recited in claim 8 of the present application. FIGs. 5a and 5c show only a frame 20 with locking clip receiver assemblies 34, but do not show biased detent tabs (Col. 10, lines 34-37).

The rejection of claims 1, 6, 8, and 9 under 35 USC § 102(e) as being anticipated by U.S. Patent 6,907,882 to Ging et al. has been overcome and should be withdrawn.

### **§ 103 Rejections**

Claims 27-30 are rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent 6,907,882 to Ging et al. The Examiner contends that the method steps of claims 27-30 would have been obvious in light of Ging et al. The Applicants respectfully disagree and further contend that the Examiner has failed to present a *prima facie* case of obviousness.

MPEP 2142 states: “The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” Further, “All words in a claim must be considered in judging the patentability of that claim against the prior art.”

(MPEP 2143.03, quoting *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).)

For example, both claims 27 and 29 recite “the support member comprising at least two generally parallel slots.” It appears that the Examiner has failed to consider at least this limitation when judging the patentability of claims 27 and 29 because the Examiner has not factually supported the assertion that Ging discloses this limitation. Thus, the Applicants are under no obligation to submit evidence of nonobviousness.

Further, claim 27 of the present application recites “inserting the intermediate portion of the mounting clip into the slots on the support member, with the free ends of the mounting clip projecting from one side of the support member; and inserting the free ends of the mounting clip into the connector receptacles on the respiratory component.” The Examiner suggests that frame 20 is the equivalent to the respiratory component and locking clip 82 is equivalent to the mounting clip of claim 27. However, in Ging, both the free ends and the intermediate portion of locking clip 82 are inserted into a single component - frame 20 (FIG. 10a), unlike claim 27 where the mounting clip of the present application is inserted into different components - the support member and the respiratory component.

Additionally, the steps of claim 29 include attaching the mounting clip to both the respiratory component and the support member. The Examiner suggests that frame 20 is the equivalent to the respiratory component and locking clip 82 is equivalent to the mounting clip of claim 29. However, in Ging, both the free ends and the intermediate portion of locking clip 82 are inserted into a single component - frame 20 (FIG. 10a), unlike claim 29 where the mounting clip of the present application connected to different components - the support member and the respiratory component.

Further, independent claim 29 recites, for example, “providing a support member configured to be disposed around a user’s waist.” In the Office Action dated May 12, 2009, the Examiner stated, “the prior art does not disclose a user-wearable respiratory component support member configured to be disposed around a user’s waist.” As noted by the Examiner, the headgear assembly of Ging is not designed to be secured around a waist of a user. Instead, it is intended to be attached to the head of a user, as shown, for example, in fig. 1.

For at least these reasons, claims 27 and 29 would not have been obvious at the time of the invention and is patentable over Ging. Claim 28 adds additional features to claim 27 and

claim 30 adds additional features to claim 29, therefore claims 28 and 30 are patentable for at least the same reasons as above.

The rejection of claims 27-30 under 35 USC § 103(a) as being unpatentable over U.S. Patent 6,907,882 to Ging et al. has been overcome and should be withdrawn.

In view of the above, it is submitted that the application is in condition for allowance. Examination and reconsideration of the application is requested.

Respectfully submitted,

August 4, 2009

Date

By: \_\_\_\_\_ /Anna A. Wetzels/

Anna A. Wetzels, Reg. No.: 53,146

Telephone No.: 651-737-8345

Office of Intellectual Property Counsel  
3M Innovative Properties Company  
Facsimile No.: 651-736-3833